

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

FILED
JAN 15 2010
By PATRICK E. DUFFY, CLERK
DEPUTY CLERK, MISSOULA

UNITED STATES OF AMERICA,)	Cause No. CR 03-07-M-DWM
)	
Plaintiff,)	
)	
vs.)	ORDER GRANTING MOTION
)	TO DEPOSE TONY EDWARDS
MATTHEW EVANS DOWD,)	
)	
Defendant.)	
_____)	

This case comes before the Court on Defendant/Movant Matthew Dowd's motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. Dowd is a federal prisoner proceeding with counsel Palmer Hoovestal.

On December 11, 2009, some of Dowd's claims were denied on the merits. Order Denying Some Claims (doc. 148). As to the remaining claims, a protective order and scheduling order were issued. Protective Order and Scheduling Order (doc. 149).

On December 24, 2009, Defendant/Movant Matthew Evans Dowd moved for

leave to depose Tony Lavan Edwards.¹ While the Court found Edwards' testimony would be "of minimal relevance or cumulative of trial testimony," Order Denying Some Claims at 12, the United States failed to respond to the motion, despite telling Dowd it objected. The United States is not required to respond to a § 2255 motion until ordered to do so. Rule 5(a), Rules Governing Section 2255 Cases. Once an Answer is filed, the United States is responsible for protecting its own interests. Pursuant to L.R. 12.1(c), the motion is subject to summary ruling.

Accordingly, IT IS HEREBY ORDERED that Dowd's motion for leave to depose Tony Lavan Edwards (doc. 150) is GRANTED.

DATED this 15 day of January, 2010.



Donald W. Molloy
United States District Court

¹ Dowd characterized his motion as a motion to modify the protective order and scheduling order. That order preauthorizes deposition of certain witnesses and permits the parties to request leave to depose others. Protective Order and Scheduling Order at 5 ¶ 5. Dowd is not asking to modify the order.